AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

District of New Jersey

United States of America
v.
ELLIOTT ATWELL

Case No. 20-mj-1010 (AMD)

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of 12/1/18 thru on or about 12/24/18 in the county of Ocean in the District of New Jersey, the defendant(s) violated:

Code Section	*Description of Offenses*
21 U.S.C. Sections 331(a) and 333 (a)(1); 21 USC Sections 331(k) and 333(a)(1)	See Attachment A

This criminal complaint is based on these facts:

See Attachment B

☑ Continued on the attached sheet.

Complainant's signature

S/A Daniel A. Garrabrant, FBI

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone *(specify reliable electronic means)*.

Date: 05/05/2020

Judge's signature

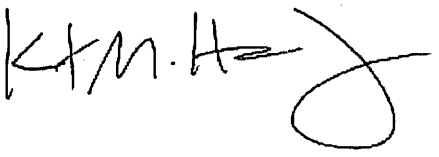
City and state: District of New Jersey

Hon. Ann Marie Donio, U.S. Magistrate Judge

Printed name and title

CONTENTS APPROVED

UNITED STATES ATTORNEY



By: KRISTEN M. HARBERG, AUSA

Date: May 5, 2020

ATTACHMENT A

Count One

(Dispensing Prescription Drugs Without a Prescription)

From on or about December 1, 2018 through on or about December 24, 2018, in Ocean County, in the District of New Jersey, and elsewhere, the defendant,

ELLIOTT ATWELL,

did introduce and cause to be introduced into interstate commerce prescription drugs, that is, "Nizagara 100" and "Nizagara long last +," contrary to the provisions of Title 21 United States Code, Section 353(b)(1), in that the drugs were dispensed without the prescription of a practitioner licensed by law to administer them, which resulted in the drugs being misbranded while held for sale.

In violation of Title 21, United States Code, Sections 331(a) and 333(a)(1).

Count Two

(Dispensing Drugs Without a Valid Prescription)

From on or about December 1, 2018, through on or about December 24, 2018, in Ocean County, in the District of New Jersey, and elsewhere, the defendant,

ELLIOTT ATWELL,

did dispense and cause to be dispensed a prescription drug, that is, "Nizagara 100" and "Nizagara long last +," contrary to the provisions of Title 21, United States Code, Section 353(b)(1), in that the "Nizagara 100" and "Nizagara long last +" were dispensed without the prescription of a practitioner licensed by law to administer them, and defendant did so while the "Nizagara 100" and "Nizagara long last +" were held for sale after shipment in interstate commerce, and the act resulted in the drugs being misbranded.

In violation of Title 21, United States Code, Sections 331(k) and 333(a)(1).

ATTACHMENT B

I, Daniel A. Garrabrant, am a Special Agent with the Federal Bureau of Investigation ("FBI"), Newark Division. I have knowledge of the following facts based upon both my investigation and discussions with other law enforcement personnel and others. Because this affidavit is being submitted for the sole purpose of establishing probable cause to support the issuance of a Complaint, I have not included each and every fact known to the Government concerning this matter. Where statements of others are set forth herein, these statements are related in substance and in part. Where I assert that an event took place on a particular date, I am asserting that it took place on or about the date alleged.

THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

1. The United States Food and Drug Administration ("FDA") is the federal agency responsible for protecting the health and safety of the American public by ensuring, among other things, that drugs offered for sale in interstate commerce are safe and effective. The FDA approves a drug for distribution in interstate commerce only after the drug's sponsor has demonstrated compliance with all applicable provisions of the Federal Food, Drug, and Cosmetic Act ("FDCA"), including that the drug is safe and effective for its intended use.

2. The FDCA defines a "drug" to include "articles that (1) are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans, and (2) are intended to affect the structure or function of the human body. 21 U.S.C. § 321(g)(1)(B) and (C).

3. Because of their toxicity and other potential harmful effects, certain drugs are not considered safe for human use except under the supervision of a practitioner licensed by law to administer such drugs. These drugs are known as prescription drugs. 21 U.S.C. § 353(b)(l)(A). Under the FDCA, the application approved by the FDA for certain drugs limits those drugs to

use under the professional supervision of a practitioner licensed by law to administer the drugs. These drugs are also known as prescription drugs. 21 U.S.C. § 353(b)(l)(B).

4. The FDCA prohibits the introduction or delivery for introduction into interstate commerce of drugs that are misbranded. 21 U.S.C. § 331(a). The FDCA also prohibits the alteration, destruction, or removal of the label of a drug, or committing any act with respect to a drug, if the act is done while the drug is held for sale after shipment in interstate commerce and results in the drug being misbranded. 21 U.S.C. § 331(k).

5. A prescription drug is misbranded if it is dispensed other than pursuant to a valid prescription. 21 U.S.C. § 353(b)(1).

SILDENAFIL

6. Sildenafil Citrate is the active pharmaceutical ingredient in Viagra, which is a branded drug product that is FDA-approved for the treatment of erectile dysfunction. Viagra, and all drugs that contain Sildenafil, require a prescription.

7. "Nizagara-100" is a prescription drug containing Sildenafil Citrate. "Nizagara-100" has not been approved by the FDA.

8. "Nizagara long last +" is a prescription drug containing Sildenafil and Dapoxetine. "Nizagara long last +" has not been approved by the FDA.

THE FBI INVESTIGATION

9. At all times relevant to this Complaint, the defendant, Elliott Atwell ("ATWELL"), lived at 1133 Oak Hill Drive, Charlottesville, Virginia 22902. In March 2020, I began conducting an investigation involving ATWELL'S involvement in the production of child pornography, also referred as child sexual abuse material ("CSAM"). In the course of this investigation and after conducting multiple interviews and collecting numerous pieces of evidence, I learned that over a

period of several years, ATWELL developed online and in-person relationships with multiple juveniles in New Jersey and elsewhere. ATWELL engaged them in sexually explicit discussion and sent them sex toys and sexual enhancement medications in an effort to entice them to produce CSAM.

10. In March of 2020, with the permission of his parents, I interviewed a juvenile, who at all times relevant to this Complaint, lived in Ocean County, New Jersey. The juvenile advised that in the fall and/or winter of 2018, when he was 16 years old, ATWELL told him that he was sending him a package containing "Viagra" and "dick pills" in the mail. ATWELL told the juvenile that he was sending the medication so that the juvenile could have erections that lasted a long time and could have sex "like a porn star." ATWELL told the juvenile when the package was on its way, making it clear to the juvenile that ATWELL was tracking the package. The juvenile stated that his mother intercepted and signed for the package, which prevented the juvenile from receiving the medication.

11. The juvenile's mother turned the package over to me. A label from "EMS Speed Post" was affixed to the envelope, and the package was addressed to the juvenile at his home address in New Jersey. The number 4342499298 was written directly below the juvenile's name and address. Based on subscriber information records that I subpoenaed from AT&T, as well as numerous interviews that I have conducted with multiple victims in this investigation, I am aware that cellphone number 434-249-9298 is subscribed to, and used by, ATWELL. This number has been assigned to ATWELL since April 6, 2009.

12. I examined the contents of the package and observed that it contained:

a. One foil package labeled "NIZAGARA–100." The package contained 4 pills. The label stated that each tablet contained "Sildenafil Citrate IP e.q. to Sildenafil

100 mg." The label has a warning advising, "Schedule "H" Drug. Warning. To be sold by retail on the prescription of a registered Medical Professional Only." The label also warns, "Keep out of the reach of children." The label states that the item was manufactured by a company in India.

b. Two foil packages labeled "NIZAGARA long last +." Each package contained 10 pills. The label stated that each tablet contained "Sildenafil Citrate IP e.q. to Sildenafil 100 mg" and "Dapoxetine Hydrochloride e.q. to Dapoxetine 100 mg." The label states, "For Male Erectile Dysfunction in Premature Ejaculation. Keep out of reach of children." The label also states, "Dosage: As directed by the physician." The label states that the item was manufactured by a company in India.

13. I was able to use the tracking number to track the package as follows:

a. December 15, 2018 package acceptance in India.

b. December 15, 2018 package processed through facility in Delhi, India.

c. December 18, 2018 package processed in New York, New York, at the United States Postal Service.

d. December 22, 2018 package inbound out of customs.

e. December 24, 2018 package arrived at the United States Postal Service Regional Facility in Trenton, New Jersey.

f. December 24, 2018 at 1:24 p.m. package delivered to the residence in New Jersey. The tracking record indicates the juvenile's mother signed for the package.

14. I am aware that the juvenile did not have a prescription for the medication referenced above in Paragraph 12.